

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MEMORANDUM & ORDER

The Court has before it a pro se state prisoner’s civil rights complaint under 42 U.S.C. § 1983 and an application to proceed *in forma pauperis* [Docs. 1, 2]. Pursuant to the Prison Litigation Reform Act of 1996 (“PLRA”), Pub. L. No. 104-34, §§ 801-10, 110 Stat. 1321, a prisoner cannot bring a new civil action or appeal a judgment in a civil action *in forma pauperis* if he has, three or more times in the past, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was frivolous, malicious, or failed to state a claim upon which relief may be granted. The only exception is if the prisoner is in “imminent danger of serious physical injury.” 28 U.S.C. §1915(g).

While incarcerated, Plaintiff has had at least three prior civil rights actions dismissed as frivolous or for failure to state a claim. *See Cole v. Corr. Corp. of Am.*, No. 1:10-cv-1303 (W.D. Tenn. Sept. 1, 2011) (order dismissing case as frivolous or for failure to state a claim and noting that the dismissal was a first strike under §1915(g));¹ *Settle v. Tenn. Dept. of Corr.*, No. 3:11-cv-567 (E.D. Tenn. Apr. 18, 2012) (order dismissing case as frivolous and for failure to state a

¹ Mike Settle is also known as Michael Cole. *See Settle v. U.S. Atty. Gen.*, No. 3:15-cv-00715, 2015 WL 4068278, at *1 n.1 (M.D. Tenn. July 2, 2015).

claim); *Settle v. U.S. Post Office*, No. 2:14-cv-2559 (W.D. Tenn. Sept. 11, 2015) (order dismissing case for failure to state a claim); and *Settle v. Obama*, No. 3:15-cv-365 (E.D. Tenn. Nov. 17, 2015) (order dismissing case for failure to state a claim and noting that the dismissal counts as a strike under §1915(g)).

Indeed, in a habeas corpus case filed in the Middle District, the dismissal order stated:

The Court is aware that Mr. Settle has filed approximately 40 actions in federal district courts in Tennessee and the Sixth Circuit—all unsuccessful to date—and has avoided significant filing fees and the 3-strikes provision of the PLRA, 28 U.S.C. § 1915(g), by characterizing the majority of his actions as petitions for the writ of habeas corpus. However, he has had at least two actions brought under 42 U.S.C. § 1983 dismissed for failure to state a claim.

Settle v. U.S. Atty. Gen., No. 3:15-CV-00715, 2015 WL 4068278, at *1 n.2 (M.D. Tenn. July 2, 2015). Since July 2, 2015, the date of the dismissal of that habeas corpus petition, Plaintiff has accumulated two more strikes.

Obviously anticipating that the 3-dismissal rule in §1915(g) would apply here, Plaintiff asserts that he “is in imminent danger of serious physical mental injury, defendants acts ‘policy or custom,’ not same treatment access to federal code as federal offender in state custody, the failure to comply with (I.C.C.) procedures and rights of ‘sending state’ to the ‘receiving State.’ 28 U.S. 1915(g)” [Doc. 1 pp. 3-4]. As the Court interprets these abstruse contentions and others made in the complaint, Plaintiff is alleging a denial of his First Amendment right of access to courts and a denial of a transfer from state custody to federal custody. Clearly, none of these contentions possibly could qualify for § 1915(g)’s “serious physical injury” exception.

Thus, in order to file this action, Plaintiff must prepay the entire \$400.00 filing fee. Plaintiff’s motion for leave to proceed *in forma pauperis* is **DENIED** [Doc. 2]. Plaintiff’s complaint has been filed for the purpose of making a record and for statistical purposes and will

be **DISMISSED WITHOUT PREJUDICE** to Plaintiff's filing a fee-paid § 1983 complaint.

The dismissal will be based on the three-strike rule in 28 U.S.C. § 1915(g).

A SEPARATE ORDER WILL ENTER.

s/ Thomas W. Phillips
SENIOR UNITED STATES DISTRICT JUDGE